

EXHIBIT A

C**Effective: [See Text Amendments]****United States Code Annotated Currentness****Title 15. Commerce and Trade****■ Chapter 2D. Investment Companies and Advisers****■ Subchapter I. Investment Companies (Refs & Annos)****→ 80a-35. Breach of fiduciary duty****(a) Civil actions by Commission; jurisdiction; allegations; injunctive or other relief**

The Commission is authorized to bring an action in the proper district court of the United States, or in the United States court of any territory or other place subject to the jurisdiction of the United States, alleging that a person serving or acting in one or more of the following capacities has engaged within five years of the commencement of the action or is about to engage in any act or practice constituting a breach of fiduciary duty involving personal misconduct in respect of any registered investment company for which such person so serves or acts—

- (1) as officer, director, member of any advisory board, investment adviser, or depositor; or
- (2) as principal underwriter, if such registered company is an open-end company, unit investment trust, or face-amount certificate company.

If such allegations are established, the court may enjoin such persons from acting in any or all such capacities either permanently or temporarily and award such injunctive or other relief against such person as may be reasonable and appropriate in the circumstances, having due regard to the protection of investors and to the effectuation of the policies declared in section 80a-1(b) of this title.

(b) Compensation or payments as basis of fiduciary duty; civil actions by Commission or security holder; burden of proof; judicial consideration of director or shareholder approval; persons liable; extent of liability; exempted transactions; jurisdiction; finding restriction

For the purposes of this subsection, the investment adviser of a registered investment company shall be deemed to have a fiduciary duty with respect to the receipt of compensation for services, or of payments of a material nature, paid by such registered investment company, or by the security holders thereof, to such investment adviser or any affiliated person of such investment adviser. An action may be brought under this subsection by the Commission, or by a security holder of such registered investment company on behalf of such company, against such investment adviser, or any affiliated person of such investment adviser, or any other person enumerated in subsection (a) of this section who has a fiduciary duty concerning such compensation or payments, for breach of fiduciary duty in respect of such compensation or payments paid by such registered investment company or by the security holders thereof to such investment adviser or person. With respect to any such action the following provisions shall apply:

- (1) It shall not be necessary to allege or prove that any defendant engaged in personal misconduct, and the plaintiff shall have the burden of proving a breach of fiduciary duty.
- (2) In any such action approval by the board of directors of such investment company of such compensation or payments, or of contracts or other arrangements providing for such compensation or payments, and ratification or approval of such compensation or payments, or of contracts or other arrangements providing for such compensation or payments, by the shareholders of such investment company, shall be given such consideration by the court as is deemed appropriate under all the circumstances.

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(3) No such action shall be brought or maintained against any person other than the recipient of such compensation or payments, and no damages or other relief shall be granted against any person other than the recipient of such compensation or payments. No award of damages shall be recoverable for any period prior to one year before the action was instituted. Any award of damages against such recipient shall be limited to the actual damages resulting from the breach of fiduciary duty and shall in no event exceed the amount of compensation or payments received from such investment company, or the security holders thereof, by such recipient.

(4) This subsection shall not apply to compensation or payments made in connection with transactions subject to section 80a-17 of this title, or rules, regulations, or orders thereunder, or to sales loads for the acquisition of any security issued by a registered investment company.

(5) Any action pursuant to this subsection may be brought only in an appropriate district court of the United States.

(6) No finding by a court with respect to a breach of fiduciary duty under this subsection shall be made a basis (A) for a finding of a violation of this subchapter for the purposes of sections 80a-9 and 80a-48 of this title, section 780 of this title, or section 80b-3 of this title, or (B) for an injunction to prohibit any person from serving in any of the capacities enumerated in subsection (a) of this section.

(c) Corporate or other trustees performing functions of investment advisers

For the purposes of subsections (a) and (b) of this section, the term "investment adviser" includes a corporate or other trustee performing the functions of an investment adviser.

CREDIT(S)

(Aug. 22, 1940, c. 686, Title I, 36, 54 Stat. 841; Dec. 14, 1970, Pub.L. 91-547, 20, 84 Stat. 1428; June 4, 1975, Pub.L. 94-29, 7 28(7), 89 Stat. 166; Dec. 4, 1987, Pub.L. 100-181, Title VI, 7 622, 101 Stat. 1262.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1970 Acts. Senate Report No. 91-184 and Conference Report No. 91-1631, see 1970 U.S. Code Cong. and Adm. News, p. 4897.

1975 Acts. Senate Report No. 94-75 and House Conference Report No. 94- 229, see 1975 U.S. Code Cong. and Adm. News, p. 179.

1987 Acts. Senate Report No. 100-105, see 1987 U.S. Code Cong. and Adm. News, p. 2089.

Amendments

1987 Amendments. Subsec. (b)(4). Pub.L. 100-181, 7 622(1), substituted "loads" for "loans".

Subsec. (c). Pub.L. 100-181, 7 622(2), (3), redesignated as subsec. (c) provisions which were added and designated as subsec. (d) by Pub.L. 94-29; and substituted "subsections (a) and (b)" for "subsections (a) through (c)", respectively.

Subsec. (d). Pub.L. 100-181, 7 622(2), redesignated as subsec. (c) provisions which were added and designated as subsec. (d) by Pub.L. 94-29.

1975 Amendments. Subsec. (d). Pub.L. 94-29 added subsec. (d).

1970 Amendments. Subsec. (a). Pub.L. 91-547 designated existing provisions as subsec. (a) and substituted in first sentence "has engaged within five years of the commencement of the action or is about to engage in any act or practice

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constituting a breach of fiduciary duty involving personal misconduct" for "has been guilty, after August 22, 1940, and within five years of the commencement of the action, of gross misconduct or gross abuse of trust" and second sentence reading "If such allegations are established, the court may enjoin such persons from acting in any or all such capacities either permanently or temporarily and award such injunctive or other relief against such person as may be reasonable and appropriate in the circumstances, having due regard to the protection of investors and to the effectuation of the policies declared in section 80a-1(b) of this title" for prior provision reading "If the Commission's allegations of such gross misconduct or gross abuse of trust are established, the court shall enjoin such person from acting in such capacity or capacities either permanently or for such period of time as it in its discretion shall deem appropriate".

Subsec. (b). Pub.L. 91-547 added subsec. (b).

Effective and Applicability Provisions

1975 Acts. Amendment by Pub.L. 94-29 effective June 4, 1975, see section 31(a) of Pub.L. 94-29, set out as a note under section 78b of this title.

1970 Acts. Amendment by Pub.L. 91-547 effective Dec. 14, 1970, and upon expiration of 18 months after Dec. 14, 1970, respectively, see section 30, introductory text and par. (4) of Pub.L. 91-547, set out as a note under section 80a-52 of this title.